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RIGHTS OF THE CHILD

Written statement* submitted by the Romanian Independent Society of Human Rights, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[11 January 2002]

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE. * 0 0 2 0 1 0 2 6 7 *

ENG

1. SIRDO is a non-governmental organization created in 1990 with the purpose of protecting and promoting human rights and fundamental freedoms in accordance with the principles of the UN Charter and the universal and regional conventions and treaties Romania is part to. SIRDO's programs mainly focus on the legal assistance, counselling and support of the victims of human rights violations in relationship with state authorities. A special attention is drawn upon the way in which the Romanian state deals with implementing the international human rights instruments.

2. SIRDO's intervention capacity on national scale is diminished by the government's formal attitude in relationship with non-governmental organizations considered by the executive to lack expertise and the collective initiative of the civil society and to have the media involvement only in noticing the effects of phenomena affecting human dignity. Therefore, SIRDO asks for the attention and intervention of the Commission on Human Rights in order to determine Romania to fully implement the UN Convention for Children's Rights ratified in 1990.

3. Thus, we wish to present the lack of protection of the new born and minor children who can be abandoned even from birth by their parents in the maternities or subsequent to treatment in paediatric hospitals, without any legal consequences for their parents. We think that the Romanian state is guilty of violating the provisions of the UN Convention on Children's Rights by ignoring its principle, namely "the superior interest of the child" as well as the report to the particular situation which includes the guarantee of the child's right to "a name and identity".

4. There are situations related to human rights violations, which SIRDO has in view and which can be included in the category of violating the right to adequate protection of the state. In the case of abandonship of the new born or minor child, of parents' negligence towards their children, the Romanian State does not apply its national legal and institutional mechanisms, considering that the State itself is not a persecution agent. Thus, it leaves place for an extremely dangerous phenomenon, which most times, becomes the main cause of nameless children, with temporary or formal identity, and of the possibility that they may be subjected to exploitation, be trafficked, displaced without return in other countries by forms more or less related to adoption.

5. The tolerance with which the maternities and paediatric hospitals bear the costs for supporting the abandoned child, with no intervention of the state institutions in order to identify and sanction the parents guilty of abandonship, makes us think that this phenomenon, transferred from communism times, is intentionally ignored. Thus, invoking compassion for the life level under the limit of surviving possibilities of the persons abandoning their children in maternities and paediatric hospitals, the institutions responsible and the media are also guilty for ignoring the measures necessary to eradicate poverty on national scale.

6. The national legal void allows for the tolerance of abandonship of children, while the institutional mechanisms for social assistance do not intervene to ensure the abandoned new born or minor child the right to benefit of family environment.

7. The constitutional rulings contain clear provisions on the protection of children and teenagers:
"Children enjoy a special regime of protection and assistance in exercising their right"; "The exploitation of minors, their use in activities damaging for their health, morality or that could endanger their life or normal development are forbidden."

(The Romanian Constitution, Art. 34, Align 1, Align 3). Thus, children, together with youths, are entitled to special protection and assistance and this right is completed by the obligation of the state to ensure the necessary conditions for the normal development of the child. But applying the contents of Art. 10. Align 3 of the International Pact for Economic, Social and Cultural Rights by constitutional provisions remains only a formal act.

8. Although constitutional norms mention the right of the child to be protected against any form of abuse coming from their family or state, we can notice that the abandonship of the child can hardly be actually sanctioned. The rulings of the Penal Code (Art. 309) incriminate and punish the crime of "abandonship by the family", not expressly incriminating the abandonship of the child. It also stipulates the situation when the minor is abandoned by the person who has the legal obligation to support them. This is the situation assimilated with the form of child abandonship. But the same article mentions that penal action is made at the complaint of the victim(previous complaint- a special penal procedure). We consider that this means stipulated by the lawmakers cannot efficiently protect the right of the child guaranteed by Constitution and the international treaties and conventions ratified by Romania. The lack of means to inform authorities on the child' abandonship creates the premises for continuing and developing this phenomenon. Thus, we can undoubtedly state that there is a certain interest in maintaining such a legal anomaly allowing the action of mafia networks, suspected to be involved in illegal adoptions, of selling Romanian children and trafficking their organs.

9. In order to eradicate this phenomenon, SIRDO asks for the urgent intervention of the Commission on Human Rights that should propose the monitoring of the effecting implementation of the UN Convention for Children's Rights in Romania by installing the capacities of the Committee for Children's Rights, of the Special Rapporteur for Children's Rights and of the specialised institutions (UNICEF). Thus, our insistence focuses on reaching a balance between the penal sanction in case of child abandonship and the protection of the family in incapacity of supporting their own children.